

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JOYCE ROGERS

PLAINTIFF

VS.

CIVIL ACTION NO. 3:05cv548-TSL-JCS

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY ADMINISTRATION

DEFENDANT

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

This cause comes before the Court on the Defendant's Motion to Dismiss for Failure to Prosecute (docket entry number 10) and the Plaintiff's Response thereto. The Defendant has moved for dismissal based on Plaintiff's failure to comply with the Court's Standing Local Order requiring the Plaintiff to serve and file an appropriate dispositive motion within 30 days from the filing of the defendant's answer. The Plaintiff, who is proceeding *in forma pauperis* and without counsel, filed her complaint on September 8, 2005. The Defendant filed an answer to the Complaint on February 15, 2006, along with a certified copy of the transcript of the administrative record. Thereafter, the Plaintiff failed to file a dispositive motion, and the Defendant filed the Motion to Dismiss for Failure to Prosecute on August 3, 2006. The Plaintiff responded to the Motion on September 1, 2006 (docket entry number 11), and filed a Motion to Reverse the ALJ on December 27, 2006. The Court has considered these filings and determines that dismissal for failure to prosecute is not warranted. Accordingly, the undersigned recommends that the Defendant's Motion to Dismiss be **denied**. The undersigned will consider the case once the Defendant responded to the pending Motion to Reverse the ALJ and any timely rebuttal is received thereto.

The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendation contained within this report and recommendation within ten (10) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. §636, Douglass v. United Services Automobile Association, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

RESPECTFULLY SUBMITTED, this the 17th day of January, 2007.

S/ James C. Sumner
UNITED STATES MAGISTRATE JUDGE